

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 211 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

OMEGA ENGINEERING PVT LTD

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.R.JAIN

Date of decision: 11/07/96

ORAL JUDGEMENT

"At the instance of the Revenue, the following two questions are referred to this Court under Section 256 (1) of the Income Tax Act, 1961 :-

"1. Whether, on the facts and in the circumstances of the case and in law, the ITAT, Ahmedabad was justified in confirming C.I.T

(Appeals), surat's order and in directing the I.T.O. to allow depreciation and investment allowance on the total cost of assets without deducting therefrom the amount of subsidy of Rs. 41,000/- received by the assessee from the Government to arrive at the "Actual Cost" of the assets, as provided for under sec. 43(1) of the Income Tax Act?"

2. Whether, on the facts and in the circumstances of the case and in law, the ITAT, Ahmedabad was justified in confirming C.I.T (Appeal), Surat's order and in directing the I.T.O. to allow depreciation and Investment allowance on the total cost of assets without deducting therefrom the amount of subsidy Rs. 34,000/- received by the assessee from the Government to arrive at the "Actual Cost" of the assets, as provided for under sec. 43(1) of the Income Tax Act?"

2. The Tribunal decided the controversy following the decision of this Court in the case of CIT Vs. Grace Paper Industries Pvt Ltd. reported in (1990) 183 ITR 591. This case is also covered by the decision of the Apex Court in the case of CIT Vs. P.J. Chemicals. reported in 210 ITR 830. Hence, the questions are required to be answered against the Revenue and in favour of the Assessee. Accordingly, we answer both the questions in favour of the Assessee and against the Revenue. This reference is disposed of accordingly with no order as to costs."